IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 968 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NARSHIBHAI BHANABHAI

Versus

GUJARAT STATE ROAD TRANSPORT CORPORATION

Appearance:

MR PRABHAKAR UPADHYAY FOR MR MUKESH H RATHOD for Petitioner

MR KN RAVAL for Respondent No. 1

CORAM : MR.JUSTICE R.K.ABICHANDANI

Date of decision: 02/03/2001

ORAL JUDGEMENT

1. The petitioner challenges the award of the Labour Court, Rajkot dated 5-4-1989 to the extent that it goes against the petitioner by imposing punishment of stoppage of two increments without future effect and denial of backwages while allowing his reinstatement after setting

aside the order of dismissal.

2. The petitioner was a driver who was supposed to take the bus with passengers on 1-1-1985 at 7.45 p.m. He remained absent without informing anybody, as a result of which, the bus could start only at 11.00 a.m. It was brought on the record of the Labour Court that, in the past, the employee was several times found guilty of similar lapses and he was given an opportunity to improve for nearly fifteen times. The delinquent did not give any reply to the chargesheet dated 6-1-1985 which was duly served on him. He did not remain present for hearing pursuant to the showcause notice. The Labour Court came to a finding on the basis of the material on record that the petitioner was habituated to remain absent, and that he did not report himself for duty without informing on 1-1-1985 as a result of which, the passenger bus was delayed upto 11.00 a.m. This would obviously have resulted into great inconvenience to the public and such absence cannot be viewed lightly.

3. As observed by a Division Bench of this Court in Maganbhai L. Chauhan v. Divisional Controller, G.S.R.T.C., reported in 1999 (1) GLH 527, if an employee remains absent in such a responsible post without prior information, such absence cannot be tolerated. In that case, the learned Single Judge allowed the petition filed by the S.T. Corporation against the award by which the reinstatement with 50% backwages was ordered, and the Division Bench dismissed the appeal against the order of the learned Single Judge. In that case also, it was found that on sixteen occasions, the employee had remained absent without prior permission and he was found to be a habitual absentee, just as in the present case. The Labour Court in the present case however taking a lenient and sympathetic view of the matter, reduced the punishment of dismissal to stoppage of two increments. There is no challenge against this order by the S.T. Corporation.

4. It was sought to be contended that, not giving backwages while reinstating the delinquent amounted to double punishment, because, punishment of stoppage of two increments was already imposed under the same order. There is no question of any double punishment in this case, because, the order of dismissal was reduced to the punishment of stoppage of two increments without future effect, and while ordering reinstatement, no backwages were awarded and this entire exercise should be viewed in context of the punishment of dismissal being reduced to this arrangement.

5. The learned counsel for the workman relied on the decision of the Supreme Court in Syed Zaheer Hussain v. Union of India and others, reported in 1999 SCC [L&S] 666, in which the Supreme Court had directed the appellant's reinstatement with continuity in service and with all other benefits, but limiting the backwages to 50%. It will be noticed that the Government had left it to the Supreme Court to award appropriate penalty in that case. In the present case, the delinquent was found to be habitually absent which was not the case before the Supreme Court. Therefore, that decision cannot assist the petitioner.

6. In any event, the Labour Court was within its jurisdiction in making such order and there is no error committed by it in exercise of its jurisdiction. The petition is therefore rejected. Rule is discharged with no orders as to costs.

MARCH 02, 2001 [R.K.ABICHANDANI, J.]

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